

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

HAYWARD INDUSTRIES, INC.,

Plaintiff,

v.

Civil Action No. 3:20-cv-00710-MOC-SCR

BLUEWORKS CORPORATION,
BLUEWORKS INNOVATION
CORPORATION, NINGBO C.F.
ELECTRONIC TECH CO., LTD.,
NINGBO YISHANG IMPORT AND
EXPORT CO., LTD.,

Defendants.

DEFENDANTS' MOTION FOR USE OF AN INTERPRETER AT TRIAL

NOW COMES Defendants Blueworks Corporation, Blueworks Innovation Corporation, Ningbo C.F. Electronic Tech Co., Ltd., and Ningbo Yishang Import and Export Co., Ltd. (collectively, "Blueworks"), and files its Motion for Use of an Interpreter pursuant to 28 U.S. Code § 1827, and would show unto the Court:

1. Witness for Defendants Mr. Zefeng (Richard) Chen's primary language is Chinese. While Mr. Chen can generally understand, speak and read some English, it is not his primary language.

2. Accordingly, Mr. Chen has requested the use of a Chinese interpreter in Mandarin dialect during the course of the upcoming trial in this action so as to ensure his full comprehension of the trial and the accuracy of his communication during his testimony as a witness during the trial.

3. Mr. Chen's deposition was held in this matter on January 17, 2023, and was conducted entirely through the use of a Chinese interpreter. Therefore, Plaintiff's counsel has been aware that Mr. Chen requires the use of an interpreter for his testimony for more than a year.

4. Defendants' counsel anticipates use of the interpreter will be needed during Mr. Chen's testimony during trial, at least in part, as well as the interpreter being available throughout the trial to interpret proceedings when needed for Mr. Chen.

5. 28 U.S.C. § 1827(d)(1) provides that the Court may determine that the services of a qualified interpreter is necessary in the case of a party or witness who speaks only or primarily a language other than the English language.

6. Counsel for the parties have conferred on this matter, and Plaintiff does not object to the use of an interpreter during Mr. Chen's testimony. The parties also agree that Defendants will be responsible for hiring the interpreter and for the interpreter's fees for this service.

7. Plaintiff has expressed concern that the presence of an interpreter throughout the trial on the basis that it may cause delay. Defendants anticipate that the interpreter will sit with Mr. Chen and interpret the proceedings on an as-needed basis, and do not anticipate that this use of the interpreter to aid in Mr. Chen's understanding of the proceedings will cause any delay.

8. The parties also disagree over which parties' trial time the interpretation during Mr. Chen's testimony should count against. Defendants contend that interpretation time should be included as part of the time for the party taking the examination, just as any other witness, and just as the parties conducted with respect to Mr. Chen's deposition. Plaintiff contends that *all* interpretation time should count toward Defendants' trial time, which would unfairly prejudice Defendants. Plaintiff has further stated its intention to take Mr. Chen's testimony as a part of its case-in-chief.

9. As the Court is aware, this trial was original set for February 20, 2024. On Plaintiff's Motion, Plaintiff requested that trial begin three days later, on February 23, 2024, to accommodate the anticipated birth of a baby to one of Plaintiff's witness as well as Plaintiff's desired order of witnesses at trial. Plaintiff made this request after having been advised by the Court that the Court's schedule would not permit the trial to extend beyond March 1, 2024. Defendants' agreed to accommodate Plaintiff's schedule, even though it required shortening the trial by three days, with the Plaintiff's agreement that trial time would be shared equally between the parties. Plaintiff cannot now be heard to complain that interpretation time for taking testimony of a witness whom it has known speaks primarily Chinese and requires use of an interpreter.

10. Conversely, if Defendants were charged with the entirety of interpretation time for Mr. Chen's testimony, including the time when Plaintiff is taking Mr. Chen's testimony and for which Defendants have no control over the timing, Defendants would be unfairly prejudiced; particularly where the trial has already been shortened to accommodate Plaintiff and its witnesses. For these reasons, Defendants believe that it is fair and reasonable for interpretation time to be counted toward the party taking the testimony.

WHEREFORE, Defendants request that the Court grant Defendants' Motion for a Chinese Interpreter for use at the upcoming trial in order to assist the Defendants' witness Mr. Zefeng (Richard) Chen.

Dated: February 4, 2024

Respectfully submitted,

/s/ Christina Davidson Trimmer

Christina Davidson Trimmer (N.C. Bar No. 44857)

Shumaker, Loop & Kendrick, LLP

101 South Tryon St., Suite 2200

Charlotte, North Carolina 28280-0002

Tel: (704) 945-2151

Fax: (704) 332-1197

Email: ctrimmer@shumaker.com

Jennifer Seraphine (*pro hac vice admitted*)
Keeley Vega (*pro hac vice admitted*)
Jacob Zweig (*pro hac vice admitted*)
Turner Boyd Seraphine LLP
155 Bovet Road, Suite 750
San Mateo, California 94402
Tel: (650) 521-5930
Fax: (650) 521-5931
Email: seraphine@turnerboyd.com
Email: vega@turnerboyd.com
Email: zweig@turnerboyd.com

Michelle C. Dunn
Platinum Intellectual Property
3031 Tisch Way, Suite 110 PW
San Jose, CA 95128
Tel: 404-800-5884
Fax: 877-463-0654
Email: michelle.dunn@platinum-ip.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2024, the foregoing document was served on all counsel of record using the Court's CM/ECF system, which will send notification of such filing to any CM/ECF participants.

Respectfully submitted,

/s/ Christina Davidson Trimmer

Christina Davidson Trimmer (N.C. Bar No. 44857)

Shumaker, Loop & Kendrick, LLP

101 South Tryon St., Suite 2200

Charlotte, North Carolina 28280-0002

Tel: (704) 945-2151

Fax: (704) 332-1197

Email: ctrimmer@shumaker.com